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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 133 OF 2004

APPELLANT : BIHARI RAM

VERSUS

RESPONDENTS : SHIVSHANKAR SAHU & ANOTHER

POST FOR JUDGMENT ON 18 -04-2007

Sd/-
DHIRENDRA MISHRA
Judge

17/04/2007

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 133 OF 2004

APPELLANT
CLAIMANT : BIHARI RAM, S/o NANKA, CASTE-HARIJAN, AGED ABOUT 55 YEARS, OCCUPATION-AGRICULTURE, LABOURER, R/O VILLAGE KESHAV-NAGAR,P.S. BISHRAMPUR, TAHSIL SURAJPUR, DISTT. SURGUJA (C.G.)

VERSUS

RESPONDENTS
NON-APPLICANTS :

1. SHIVSHANKAR SAHU, S/O BHARAT RAM SAHU, AGED ABOUT 45 YEARS, OCCUPATION - AGRICULTURE, SERVICE, R/O VILLAGE PAMPAPUR, P.S. & TAHSIL SURAJPUR, DISTT. SURGUJA (C.G.)
(OWNER)

2. THE ORIENTAL INSURANCE COMPANY LIMITED, THROUGH BRANCH MANAGER, THE ORIENTAL INSURANCE COMPANY LIMITED, BRANCH OFFICE SADAR ROAD, NEAR STATE BANK OF INDIA, AMBIKAPUR, DISTT. SURGUJA (C.G.)
(INSURER)

Present:
Shri A.K. Shukla, counsel for the appellant.
Shri S.K. Mishra, counsel for respondent No.2.

J U D G M E N T
(Delivered on 18 April 2007)

This appeal is directed against the award dated 23.12.2003 passed by II Additional Motor Accident Claims Tribunal (FTC), Surajpur, Distt. Surguja in M.A.C.C. No. 33/02 whereby application of the appellant/claimant for compensation under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act') has been rejected.

2. Case of the claimant before the Tribunal was that on 27.1.1999 at about 2.00 p.m. he was going to Surajpur by his bicycle. Respondent No. 1 driving his Vespa Scooter bearing No.

M.P.27-C/2203 rashly and negligently dashed the appellant, as a result of which the appellant received grievous injuries on different parts of the body. However, he was treated in the hospital and accordingly, the petition under Section 166 of the Act claming compensation of Rs.3,00,000/- was filed before the Tribunal. Respondent No. 1 was proceeded ex-parte. Respondent No. 2/Insurance Company in its reply admitted the insurance of vehicle No. M.P.27-C/2203 and denied rest of the facts averred in the claim petition and submitted that the insured vehicle No. M.P.27-C/2203 was not involved in the accident and an unknown motor was in fact involved in the accident. Respondent No. 1 did not have valid driving licence and therefore, respondent No. 2 was not liable for payment of compensation.

3. After framing various issues, learned Claims Tribunal by the impugned award dismissed the claim petition with a finding that appellant/claimant Bihari sustained grievous injuries by some unknown vehicle, it is not proved that respondent No. 1 Shivshankar on 27.1.1999 while driving scooter No. M.P. 27-C/2203 rashly and negligently dashed Bihari Ram. The Tribunal assessed the damages suffered by appellant/claimant at Rs.40,000/- but further held that he is not entitled to recover the same from respondents in view of the finding recorded against issue No. 1. While deciding issue No. 3 it has been held that the claim petition of the appellant/claimant was not barred by limitation and it has been further decided that insurance policy was valid on the date of accident and respondent No. 2 has not been able to establish that there was any breach of policy condition by respondent No. 1 and with these findings the claim petition has been dismissed.

4. Learned counsel for the appellant/claimant submitted that the claim petition has been dismissed on hypothetical consideration by recording incorrect findings. The Tribunal has relied upon investigation report of the police which is not a conclusive piece of evidence and therefore, the award impugned cannot be sustained.

5. On the other hand, learned counsel for the respondent No. 2 Shri Suryakant Mishra, submitted that the claimant has utterly failed to prove that vehicle belonging to respondent No. 1 was involved in the accident and the finding of the learned Tribunal in this regard is based on the evidence available on record, which does not call for interference.

6. I have heard counsel for the respective parties and perused the material available on record.

7. The Tribunal vide order dated 19.8.2003 had allowed the application of respondent No. 2 / Insurance Company and permitted it to take defence on other grounds also. Record of the criminal case was requisitioned at the instance of the claimant. Learned Claims Tribunal after considering the statements of Bhiari (AW-1), Heeradhan, S/o Bihari (AW-2) and Ramnarayan (AW-3), has arrived at the conclusion that Heeradhan has lodged the report as per instructions of his father and he had not seen the accident himself personally and the report was lodged by him against unknown motorcyclist. From perusal of the case diary of crime No. 29/99, the Tribunal has arrived at the conclusion that the police has submitted final report as after investigation the motor cycle involved in the accident could not be traced and on these grounds, the Tribunal has come to a conclusion that the witnesses examined by the appellant/claimant in support of his claim petition were not reliable and accordingly, dismissed the claim petition. There is no illegality or infirmity in the award impugned which warrants interference by this Court.

8. In the result, the appeal being devoid of substance deserves to be dismissed and is accordingly dismissed. No order as to costs.

Sd/-
DHIRENDRA MISHRA
Judge